



Legislative Report

Controlling the growth of customized living

Disability Services Division

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Contents

- I. Executive summary 4
- II. Legislation 5
 - Laws 2021, First Special Session chapter 7, article 13, section 66 5
- III. Introduction 6
 - Purpose of report 6
- IV. Customized living use in BI and CADI waivers 7
 - 2021 customized living growth and policy changes 7
 - Customized living settings serving people on the BI or CADI waivers 9
- VI. Report recommendations 10
 - Proposed timeline for implementation 10
 - Additional related customized living setting issue 11

I. Executive summary

This report provides an assessment of customized living services provided under the Brain Injury (BI) and Community Access for Disability Inclusion (CADI) waiver programs.

This report makes recommendations regarding the continuation of the moratorium on home and community-based services customized living settings under Minnesota Statutes, section 256B.49, subdivision 28, as well as other policy recommendations to ensure that customized living services are provided in a manner consistent with the policy objectives of the existing corporate foster care licensing moratorium under Minnesota Statutes, section 245A.03, subdivision 7.

Additionally, the Legislature asked DHS to recommend statutory changes to implement the transition from existing four-person or fewer customized living settings to licensed community residential settings (CRS).

This report identifies 331 settings, with 235 unique providers, where customized living services are provided to four or fewer people on the BI or CADI waivers. The majority of the settings (over 96%) are in the Twin Cities metro area. DHS recommends coordinating and communicating a plan among people receiving services, lead agencies and providers to determine if a transition from an assisted living setting to a licensed community residential setting is appropriate. For those settings where a transition is needed, and people make an informed choice to change services, DHS recommends that the provider transition to a community residential setting license by obtaining a corporate foster care moratorium exception, with guidance and coordination by the lead agency and DHS.

II. Legislation

Laws 2021, First Special Session chapter 7, article 13, section 66

(a) By January 15, 2022, the commissioner of human services shall submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over human services policy and finance. The report must include the commissioner's:

(1) assessment of the prevalence of customized living services provided under Minnesota Statutes, section 256B.49, supplanting the provision of residential services and supports licensed under Minnesota Statutes, chapter 245D, and provided in settings licensed under Minnesota Statutes, chapter 245A;

(2) recommendations regarding the continuation of the moratorium on home and community-based services customized living settings under Minnesota Statutes, section 256B.49, subdivision 28;

(3) other policy recommendations to ensure that customized living services are being provided in a manner consistent with the policy objectives of the foster care licensing moratorium under Minnesota Statutes, section 245A.03, subdivision 7; and

(4) recommendations for needed statutory changes to implement the transition from existing four-person or fewer customized living settings to corporate adult foster care or community residential settings.

III. Introduction

Purpose of report

This report is submitted to the Minnesota Legislature pursuant to Laws 2021, First Special Session chapter 7, article 13, section 66. The Disability Services Division (DSD) of the Minnesota Department of Human Services prepared this report. The report provides an assessment of current customized living use in order to prepare for the implementation of the customized living moratorium for Brain Injury (BI) and Community Access for Disability Inclusion (CADI) waivers pursuant to Minnesota Statutes 2020, section 256B.49, subdivision 28.

The report presents background information on recent customized living policy changes customized living provider standard changes and the customized living moratorium for BI and CADI waivers. The report also presents data and analysis of the prevalence of customized living use amongst the BI and CADI waivers, and recommendations for the transition of the existing customized living settings to licensure as residential programs pursuant to 245D.

IV. Customized living use in BI and CADI waivers

DHS completed an assessment of the current use of customized living by people who receive services through the BI and CADI waivers to:

- Prepare for the customized living moratorium for the BI and CADI waivers
- Support the transition of pre-existing customized living settings to a more appropriate licensure as a residential program, pursuant to 245A.02.

2021 customized living growth and policy changes

Customized living is a residential service composed of a package of regularly scheduled, health-related and supportive services provided to a person 18 years or older who lives in a setting that meets the customized living provider standards. Customized living is available to those on the BI, CADI or Elderly waivers. It is not available on the Developmental Disabilities or Community Alternative Care waivers.

The average cost of customized living on the BI and CADI waivers has been growing faster than the general trend of other disability waiver services. Table 1 compares the annual growth in number of people who use customized living and average rates paid against comparable measures for the disability waiver programs overall.

Table 1: Growth in customized living and waivers

Fiscal year	Annual growth in people using customized living	Annual growth in average monthly waiver recipients	Annual growth in customized living payments	Annual growth in average monthly waiver payments
2018	13.9%	8.3%	21.3%	1.5%
2019	14.0%	7.2%	30.9%	2.4%
2020	14.0%	7.3%	45.9%	4.8%

In fiscal year 2020, Minnesota spent \$348 million on customized living services provided under the disability waivers. Additionally, with the introduction of integrated community supports as a new residential service in 2021, DHS expects people on disability waivers to begin to use this service rather than customized living. Based on the growth in spending, and on the recommendations of the [Health and Human Services Blue Ribbon Commission](#), the Minnesota Legislature passed three policy changes related to customized living in 2021, described below.

Customized living provider standards

Minnesota Statutes, section 256S.20, subdivision 1 amends the customized living provider standards to align with the assisted living license requirement that took effect on Aug. 1, 2021. Customized living providers will now need to meet one of the following standards:

- Be licensed as an assisted living facility under Minnesota Statutes 2021, chapter 144G; or
- Be licensed as a comprehensive home care provider under Minnesota Statutes, chapter 144A and be delivering services in a HUD-funded setting, as outlined in Minnesota Statutes, section 144G.08, subdivision 7, paragraphs 11 -13.

The vast majority of customized living provider settings were required to get an assisted living license in order to continue delivering customized living services. However, there are some customized living provider settings that will likely have challenges to meet the ongoing requirements of the assisted living facility license, most notably customized living settings that serve four or fewer people on the BI or CADI waivers in single family homes. DHS has encouraged these customized living provider settings to transition to community residential settings if the setting is determined to require a community residential setting license.

Limiting four person customized living settings (moratorium)

Minnesota Statutes, section 256B.49, subdivision 28 limits new development of certain types of customized living settings. Specifically, new customized living settings that serve four or fewer people on the CADI and BI waivers in a single family home would not be allowed to be enrolled to provide customized living services. These types of customized living settings may more closely meet the definition of a residential program (245A.02, subdivision 14) than an assisted living setting, and should be licensed as such. Proper licensure will ensure appropriate supports for people and ensure compliance with the statutorily required moratorium on corporate foster care and community residential settings.

In order to transition these sites to the appropriate licensure, the Legislature created a time-limited exception to the corporate foster care licensing moratorium (Minnesota Statutes, section 245A.03, subdivision 7).

Following passage of this exception, DHS began work on a transition period that will occur over two years:

- July 2021 – June 2022: identify and contact existing settings where customized living services are provided that may be more appropriately licensed as a corporate foster care/community residential setting.
- July 2022 – June 2023: coordinate with lead agencies where identified settings are located to facilitate any needed moratorium exceptions.

Customized living settings serving people on the BI or CADI waivers

DHS needed to determine the number of existing customized living settings that serve four or fewer people on the BI or CADI waivers in order to determine the magnitude of the transition. Customized living settings that were operating on or before June 30, 2021, are considered existing customized living settings. To determine the number and location of sites, we analyzed data from the Minnesota Department of Health (MDH) and DHS.

This analysis removed settings that serve older adults as the customized living moratorium will not affect those programs. In combining these data sets, we can filter which customized living settings serve four or fewer people on the CADI or BI waiver. Below are the findings, sorted by county.

Prevalence of customized living settings serving four or fewer people on the BI or CADI waiver

County	Number of CL sites serving 4 or fewer people on the BI or CADI waivers	% share across Minnesota	Estimated number of beds
Hennepin	233	70.39%	932
Ramsey	36	10.88%	144
Anoka	21	6.34%	84
Dakota	16	4.83%	64
Washington	14	4.23%	56
Olmsted	3	0.91%	12
Itasca	2	0.60%	8
Saint Louis	2	0.60%	8
Meeker	1	0.30%	4
Scott	1	0.30%	4
Sherburne	1	0.30%	4
Stearns	1	0.30%	4
Totals	331	100%	1,324

VI. Report recommendations

DHS is committed to working with people who use services, MDH, lead agency partners, and customized living providers to ensure a safe and efficient transition for people who live in pre-existing customized living settings that serve four or fewer people on the BI or CADI waivers.

Based on the customized living provider standard changes on Aug. 1, 2021, customized living settings that serve people on the BI or CADI waivers in single family homes of four or fewer people had to obtain an assisted living license. Through the time-limited exception to the corporate foster care licensing moratorium (Minnesota Statutes, section 245A.03, subdivision 7), customized living settings that serve people on the BI or CADI waivers in single family homes may continue with the assisted living license or transition to a community residential services setting. Whatever their choice, customized living providers must comply with new licensing requirements.

Proposed timeline for implementation

The proposed timeline and action steps for customized living settings that must transition to a community residential services setting:

August 2021 to June 2022

- DHS contacts lead agencies and providers about customized living settings that serve people who may be eligible for the customized living-related exception
- DHS informs lead agencies and providers about the timeline to contact DHS Licensing to request a community residential setting license
- The communication would clarify that people must have an informed choice about whether to continue to receive a different service (community residential services) in their current setting
- DHS conducts targeted engagement of interested parties aimed at the counties with the highest number of sites
- DHS submits the customized living report to the Legislature and publishes it
- Lead agencies and providers contact DHS Licensing to request a determination of the need for a community residential setting license
- DHS licensing, working with the counties and providers, will determine if the setting requires a community residential setting license and will need a community residential setting (corporate foster care) moratorium exception.

July 2022 to June 2023.

- Lead agency corporate foster care moratorium liaisons submit a [DHS-6021](#) form, “Request to develop new corporate foster care (and community residential settings)” for people receiving services at a site
- Lead agency licensing reviews and submits the applications for the community residential license for the identified settings to DHS
- DHS Licensing processes the community residential setting license using the previous contact and review as the basis for eligibility.

July 2023 and ongoing

- DHS Licensing will continue to process the community residential setting license requests for those not completed before June 2023.

Additional related customized living setting issue

As a result of research and analysis from this report, DHS identified a related issue. Historically, BI and CADI policy allowed customized living settings to serve more than four people in a setting as long as the setting was only serving people 55 or older and this remains true today.

Providers may still create new customized living settings in single family homes serving five or more people but they are limited to serving people 55 and older on the BI and CADI waiver. This age limitation went into effect for all new customized living settings developed on or after Jan. 11, 2021.

The allowance of new customized living settings in single family homes serving five or more people age 55 and older on the BI and CADI waivers might circumvent the intention of the customized living moratorium. The BI and CADI age limitations that took effect Jan. 11, 2021, will limit new customized living settings developments as the provider has a smaller pool of eligible people to move into their setting. With the customized living moratorium and the age limitation, customized living setting growth will be limited. Therefore, if the intent of the customized living moratorium was to eliminate any new customized living settings in single family homes for those on the BI or CADI waiver, additional statutory language will be needed.

Additionally, the customized living settings serving five or more people on the BI or CADI waivers will have to comply with the updated customized living licensure policy but will not be eligible for the corporate foster care moratorium exception as those settings serving four or fewer people might be.